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10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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13 ROCIO ADAME ARAUJO DE,
14 AGUILAR, as heir to BENIGNO ANDES
15 AGUILAR and Wife to Deceased
16 BENIGNO ANDES AGUILAR, et al.,

CASE NO. 1:02-cv-6527 LJO GSA

17 Plaintiffs,

FINDINGS AND RECOMMENDATIONS
RE: PETITION FOR APPROVAL OF MINOR'S
COMPROMISE FOR **DIANA SUAREZ**
RODRIGUEZ

18 vs.

19 NORTHERN RAILROAD PASSENGER
20 CORPORATION ("AMTRAK"), et. al.,

(Doc. 245)

21 Defendants.
22 _____/

23 **INTRODUCTION**

24 _____Plaintiff, Diana Suarez Rodriguez, is a minor in this action ("minor").¹ Pending before the court
25 is a Petition for Minor's Compromise ("Petition") which was filed on March 27, 2009, by Jesus Suarez
26 ("Petitioner"), the minor's paternal uncle and guardian ad litem. (Doc. 245).² The petition is

27 ¹ The minor is ten years of age. Her date of birth is November 18, 1998.

28 ² Jesus Surez was appointed the minor's guardian ad litem previously in the Kern County Superior Court (Case number 248891JES) on December 23, 2002, prior to the removal of this action. See, Petition at Exhibit 1. Accordingly, this court recognizes Jesus Suarez as the minor's guardian ad litem.

1 supplemented by declarations from Peter McNulty Esq., the minor's attorney, Edith Rodriguez,³ the
2 minor's mother, and Jesus Suarez.

3 The Court held a hearing on the Petition for Minor's Compromise on April 14, 2009.
4 Appearing on behalf of Petitioner and Diana Suarez Rodriguez was Peter McNulty. Appearing on behalf
5 of Defendants was B. Clyde Hutchinson. All parties appeared telephonically. For the reasons discussed
6 below, this Court RECOMMENDS that the petition be GRANTED.

7 **BACKGROUND**

8 The minor's claim involves a train and a van accident that resulted in the wrongful death of Eloy
9 Suarez, the minor's father. On December 12, 2001, at approximately 4:00 pm, an Amtrak train was
10 traveling east on a single main track and struck a van driven by Mario Aguilar traveling from Polar
11 Avenue to the Central Valley Highway in Shafter, California. Benigno Aguilar, Mario Munoz, Hector
12 Sarabia, Juan Jimenez, Eloy Suarez, Jesus Romero-Rubio ("Plaintiffs"), and others were traveling in the
13 van. As a result of the collision, all occupants in the van sustained serious physical injuries resulting in
14 their deaths.

15 All of the Plaintiffs alleged that National Railroad Passenger Corporation ("Amtrak"); Walter
16 Ward; W.M. Dike; and Burlington Northern Santa Fe Corporation ("Defendants") negligently and
17 recklessly operated, controlled, and maintained the subject train and failed to follow statutory regulations
18 and internal policies and procedures which resulted in Plaintiffs' deaths. On February 19, 2009,
19 Defendants notified the court that the matter settled as to all parties. (Doc. 221). The total global
20 settlement was 2.5 million dollars. (Doc. 253).

21 The minor's portion of the global settlement amount is \$50,000.00. The Petitioner requests that
22 \$12,500.00 (25%) of the minor's gross settlement proceeds be paid for reasonable attorney's fees, and
23 that \$2,453.37 for costs of the litigation be deducted from the settlement amount. After attorney's fees
24 and costs are deducted, the minor will receive a net settlement amount of \$35,046.63. Petitioner requests
25 that the court order the purchase of an annuity from Metropolitan Life Insurance Company for the minor,
26 which has an A+ XV rating. The annuity will yield a lump sum payment of \$58,169.97 on November
27

28 ³ The declaration is signed by Jesus Suarez by and through Ms. Rodriguez's power of attorney.

18, 2019, when the minor turns twenty-one years of age.⁴

Additionally, the Suarez family was given a credit for costs of the litigation as part of a prior settlement agreement negotiated with Defendant Shafter-Wasco Ginning Co.⁵ This settlement between the minor and Shafter-Wasco Ginning Co. was previously approved on February 27, 2006 by Judge O'Neill and resulted in a \$50,000.00 award to specific plaintiffs in this action. (Doc. 185). As part of that settlement, twenty plaintiffs, including the minor and members of the Suarez family, were each awarded \$1,000. The remaining \$30,000.00 was to be used to offset litigation expenses incurred by those plaintiffs which were to be applied in direct proportion to their percentage of the global settlement amount. The amount of litigation costs credited to the Suarez family totaled \$2,235.72. Family members have agreed that this amount can be divided equally between the minor and her brother Ezequiel Suarez Rodriguez. As a result, the minor will receive an additional settlement amount of \$1,117.86, which the petitioner requests be placed in a court blocked bank account at Bank of America, 3800 Ming Avenue, Bakersfield, California 93309, telephone : 661-633-5380, until the minor reaches the age of majority. Metropolitan Life Insurance Company will also deposit the lump sum payment of \$58,169.97 into this same blocked account once the annuity matures.

DISCUSSION

This Court's Local Rule 17-202 addresses settlements for minors and provides in pertinent part:

(b) Settlement. No claim by . . . a minor . . . may be settled or compromised absent court order by the assigned Judge or Magistrate Judge approving the settlement or compromise.

• • •

(2) Such application [for minor's compromise] shall disclose, among other things, the age and sex of the minor . . . , the nature of the causes of action to be settled or compromised, the facts and circumstances out of which the causes of action arose, including the time, place and persons involved, the manner in which the compromise

⁴ The petition indicates that the minor will receive a lump sum payment of \$58,170, however, there is a discrepancy in the documentation supplied by the annuity company. It is unclear whether the lump sum payment will be \$58,169.97 or \$58,170.00. Therefore, the court has used the lesser amount. See, Petition at Exhibit 3 at pgs. 31 and 33.

⁵ The total litigation costs in this action were \$97,126.93. The \$2,453.37 reflects 10% of the Saurez's family total costs of the litigation and includes costs incurred by Gregory Moreno, Esq., whose law firm covered the bulk of the litigation expenses for several of the plaintiffs, as well as costs incurred by the McNulty Law Firm. The McNulty Law Firm also represented the minor's mother, Edith Rodriguez; Eloy Suarez, the minor's adult brother; Ezequiel Suarez Rodriguez, the minor's brother; and Francisco Suarez, the minor's paternal grandfather.

1 amount or other consideration was determined, including such additional information as
2 may be required to enable the Court to determine the fairness of the settlement or
compromise . . .

3 . . .

4 (c) Disclosure of Attorney's Interest. When the minor . . . is represented by an
5 attorney, it shall be disclosed to the Court by whom and the terms under which the
attorney was employed . . . and whether the attorney has received or expects to receive any
6 compensation, from whom, and the amount.

7 . . .

8 (e) Payment of Judgment. Whenever money . . . is recovered on behalf of a minor
9 . . . the money . . . will be (1) disbursed to the representative pursuant to state law upon
a showing that he is the duly qualified representative under state law, (2) disbursed
10 otherwise pursuant to state law, or (3) disbursed pursuant to such other order as the Court
deems proper for the protection of the minor . . .

11 The minor and the Petitioner is represented in this action by Peter McNulty of the McNulty Law
12 Firm. The case was originally filed in the Kern County Superior Court. The Defendants subsequently
13 removed the action to federal court. As part of the representation in this case, the minor's attorneys
14 investigated the location of accident and traveled to Mexico to obtain discovery responses and to take
15 numerous depositions of the minor's family members. Several depositions of witnesses were also taken.
16 In addition, the firm represented the minor during law and motion related proceedings that included a
17 motion to remand, a motion for summary judgment, a lengthy appeal, as well as the mediation that
18 resulted in settlement.

19 Based upon a review of the submissions by counsel and by the minor's guardian ad litem, this
20 Court finds the proposed settlement for Diana Suarez Rodriguez as set forth in the petition to be fair,
21 reasonable and proper. The Petition substantially includes the information required by this Court's Local
22 Rule 17-202(b)(2) and (c) and addresses the details of the proposed compromise. In this case, the
23 attorney's fees requested are 25% of the gross settlement amount. This is reasonable given the
24 complexity of this litigation, as well as the amount of work done by Mr. McNulty and the McNulty Law
25 Law Firm. Moreover, the litigation costs appear appropriate given the length of time this case has been
26 pending.

27 **CONCLUSION AND RECOMMENDATIONS**

28 For the reasons discussed above, this Court RECOMMENDS that the Petition for Approval of

1 Minor's Compromise be GRANTED in accordance with the terms outlined below :

- 2 1. Defendants National Railroad Passenger Corporation, Burlington Northern Santa Fe
3 Corporation, Walter Ward and W.M. Dike have settled all of Diana Suarez Rodriguez's
4 claims for \$50,000.00;
- 5 2. The request for attorney's fees in the amount of \$12,500.00 is GRANTED. These funds
6 shall be deducted from the minor's gross settlement amount and paid to the McNulty Law
7 Firm;
- 8 3. The minor shall be charged costs in the amount of \$2,453.37 which shall be deducted
9 from the gross settlement amount and paid to the McNulty Law firm;
- 10 4. After all of the above deductions, the minor, Diana Suarez Rodriguez, shall receive a net
11 settlement amount of \$35,046.63;
- 12 5. The net settlement proceeds of \$35,046.63 shall be used to purchase an annuity from
13 Metropolitan Life Insurance Company which is has a A+ XV rating, on behalf of the
14 minor, with a lump sum guaranteed payment of no less than \$58,169.97 on November 18,
15 2019, when the minor turns twenty-one years of age;
- 16 6. The annuity payments shall be deposited into a court-blocked bank account in the minor's
17 name at Bank of America, 3800 Ming Ave., Bakersfield, CA 93309, tel: 661.633.5380;
- 18 7. In addition, the McNulty Law Firm shall deposit \$1,117.86 into the same court blocked
19 account referenced above. This payment reflects the minor's portion of a litigation credit
20 her family received as part of a prior settlement with Defendant Shafter-Wasco Ginning
21 Co.;
- 22 8. The McNulty Law Firm shall also deposit an additional \$1.00 into the minor's blocked
23 account referenced above to ensure that said account remains open in the event the minor,
24 prior to payment of the annuity lump sum, withdraws the available funds attributable to
25 the minor's settlement;
- 26 9. The Petitioner and guardian ad litem, Jesus Suarez, is authorized and directed to execute
27 any and all documents reasonably necessary to carry out the terms of the settlement;
- 28 10. The Petitioner and guardian ad litem, McNulty Law Firm shall be responsible for ensuring

1 that Metropolitan Life Insurance Company deposits the lump sum annuity payment into
2 the Bank of America account referenced above when the annuity matures. The McNulty
3 Law firm shall also advise the minor, his mother, and the guardian ad litem, Jesus Suarez
4 of all pertinent account information, as well as the bank's receipt of the annuity lump sum
5 payment on November 18, 2019;

6 11. There shall be no access to any of the funds in the court blocked bank account or the
7 annuity until the minor reaches the age of 18 absent a court order;

8 12. Petitioner shall have sixty (60) days to submit proof of funding of the annuity to the Court;
9 and

10 13. Mr. McNulty shall serve a copy of this order on the minor's mother, Edith Rodriguez
11 forthwith and file proof of service within three court days.

12
13 These findings and recommendations are submitted to United States District Judge Lawrence J.
14 O'Neill, pursuant to 28 U.S.C. § 636(b)(1)(B). Within **eleven (11) days** after the date of this Finding and
15 Recommendation, the parties may file written objections with the Court. The document should be
16 captioned "Objections to Magistrate Judge's Finding and Recommendation." The parties are advised that
17 failure to file objections within the specified time may waive the right to appeal the District Court's order.
18 [Martinez v. Ylst, 951 F.2d 1153 \(9th Cir. 1991\).](#)

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20
21 IT IS SO ORDERED.

22 **Dated: April 17, 2009**

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE